

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: GALAXY LYNX, Complainant, vs. U S WEST COMMUNICATIONS, INC., Respondent.	DOCKET NO. C-99-137
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**ORDER DENYING REQUEST FOR FORMAL COMPLAINT PROCEEDINGS,
ORDERING INSTALLATION OF SERVICE, AND PROVIDING NOTICE OF
VIOLATION FOR PURPOSES OF CIVIL PENALTIES**

(Issued August 27, 1999)

On June 3, 1999, Galaxy Lynx (Complainant), an internet service provider in Boone, Iowa, filed a complaint with the Board concerning the local telephone service. Complainant receives service from McLeodUSA Telecommunications, Inc. (McLeod), and U S WEST Communications, Inc. (U S West). In March of 1999, Complainant ordered three additional lines to handle increased calls from its customers. The order was increased to 12 additional lines in April. The lines have not yet been installed. As of May 18, 1999, Complainant alleges it has been forced to turn away in excess of 60 customers due to the lack of the necessary telephone lines. Complainant states they have been in contact with McLeod, U S West, and Microtech Tel, an agent of U S West that attempted to sell them additional lines. Complainant asks that U S

West be directed to install the requested lines.

On June 4, 1999, the complaint was forwarded to U S West and McLeod for response. On June 8, 1999, McLeod responded that it is a reseller of U S West's services and must rely on U S West to provide the lines. McLeod states it ordered the additional facilities from U S West, which responded that the customer would have to pay the cost of any additional facilities before they would be installed.

On June 23, U S West filed a response stating it would need "a few extra weeks to complete [its] investigation of this complaint" and a response would be sent by July 14, 1999. However, U S West did not respond to the complaint at that time.

On July 21, 1999, Complainant supplemented its complaint by electronic mail, noting that it has not yet received any additional lines. Complainant also alleges U S West is intentionally delaying the installation in order to promote its own internet access services. Finally, Complainant notes the start of school will create additional demand for internet access services, demand for which Complainant cannot compete until the additional lines are installed.

On July 22, 1999, Board staff issued a proposed resolution. Because U S West completely failed to respond to the complaint, the proposed resolution required U S West to provide the requested lines, without installation charges, within 15 days.

On August 4, 1999, U S West filed a letter responding to the complaint and requesting a formal hearing. U S West provides no substantive explanation for its failure to respond to the complaint in a timely manner.

In its response, U S West argues its tariff allows it "to charge customers for construction costs when facilities are not available, and when the cost to the company is not deemed prudent." According to U S West, the tariff also provides that "when facilities are not used in a standard fashion charges may apply." U S West also argues that "when there are more than four units, or a residential building is used as a business establishment, the customer will be required to pay for the extension of the facilities." U S West believes this is the case with Complainant.

U S West states Complainant currently has 22 lines for its business and has three orders in the system for another 10 lines. U S West then states:

[Complainant] is a renter at his current location, and thus there are no assurances for long term commitment. Since the expected growth for the area is minimal, the Company believes that the cost to provide additional lines to [Complainant] is not prudent. Normal growth for the area would not require this many lines because there is only one office and four residential units at the location.

U S West estimates the customer cost of placing a 100-pair cable to the building at \$6,433.89. U S West requires prepayment of this amount by Complainant.

Complainant would also be required to provide conduit to the property line and a backboard on which to place the facilities.

U S West also responds to the allegations that it is giving preferential treatment to its own services and customers with a general denial.

LEGAL STANDARD

When a written complaint is filed with the Board concerning anything done or omitted to be done by a public utility, the Board initiates an informal complaint

resolution process pursuant to IOWA CODE § 476.3(1) (1999) and IOWA ADMIN. CODE 199-6. At the conclusion of the informal process, Board staff issues a proposed resolution. If any party is dissatisfied with the proposed resolution, they may petition the Board for formal complaint proceedings, which will be granted if there is any reasonable ground for further investigation of the complaint.

ANALYSIS

The Board will deny U S West's request for formal complaint proceedings, based upon U S West's failure to respond to the complaint in a timely manner. This is a violation of IOWA ADMIN. CODE 199-6.3(3), which requires the utility respond to a complaint within 20 days of the date on which the complaint is mailed to the utility by the Board. Lacking a response from U S West, the proposed resolution was in the nature of a default judgment in favor of Complainant. The subsequent request for formal complaint proceedings did not establish good cause for U S West's failure to respond in a timely manner. It fails to provide any substantive explanation at all, saying only that "[t]here are several issues on the complaint, and I underestimated the time needed to investigate all the issues." Given McLeod's statement on June 9, 1999, that U S West had already decided that the customer should be required to pay in advance for the installation of additional facilities, this explanation for the delay does not appear to be correct. If U S West was able to relate its position to McLeod in June, there is no reason it could not provide a response to the Board and the Complainant at the same time.

U S West's request for formal complaint proceedings will be denied and the proposed resolution will be adopted as the Board's final resolution. In addition, for purposes of civil penalties pursuant to IOWA CODE § 476.51, U S West will be notified it has violated IOWA ADMIN. CODE 199-6.3(3) through its failure to respond to the complaint in a timely manner. Another violation of this same rule may be subject to a civil penalty, levied by the Board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

The Board is aware of the issues raised in this complaint relating to the proper interpretation of U S West's tariff provisions, the extent of its obligation to construct facilities for a customer currently being served by another local exchange carrier by means of resale, the allegation that U S West is delaying this installation for anticompetitive reasons, and the proper role of McLeod in a situation like this. These are important policy questions that the Board may have to resolve in an appropriate docket in the future, but the Board cannot address these issues in a timely manner in this docket when U S West fails to respond to the complaint and the Complainant is left without the additional service it needs.

IT IS THEREFORE ORDERED:

1. Th1 request for formal complaint proceedings filed by U S West Communications, Inc., on August 4, 1999, in C-99-137 is denied.
2. U S West is directed to provide Galaxy Lynx with the requested additional service lines within 15 days of the date of this order, at no charge.

3. U S West is hereby notified, for purposes of IOWA CODE § 476.51, that it has violated IOWA ADMIN. CODE 199-6.3(3). Another violation of this same rule may be subject to a civil penalty, levied by the Board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 27th day of August, 1999.